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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,894	01/30/2004	Kobi Iki	00167-491001/02-31-0464	4190

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EXAMINER	
TOY, ALEX B	

ART UNIT	PAPER NUMBER
3739	

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/766,894	IKI ET AL.	
	Examiner	Art Unit	
	Alex B. Toy	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-46* is/are pending in the application.

4a) Of the above claim(s) *3,5-7,9,10,15,16,25-30,36,39 and 42* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4,8,11-14,17-24,31-35,37,38,40,41 and 43-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 August 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *8/17/04; 11/12/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: *IDS: 7/18/06*.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Invention I in the reply filed on June 5, 2006 is acknowledged. Claim 39 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant's election of Species I in the reply filed on June 5, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant submits that claims 1-35, 37, 38, and 40-46 read on Species I. Claim 36 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

The examiner withdraws claims 25 and 26 as being drawn to nonelected Species II (Fig. 9).

The examiner withdraws claims 28 and 29 as being drawn to nonelected Species III (Figs. 10-16).

The examiner withdraws claims 15, 16, and 30 as being drawn to nonelected Species IV (Figs. 17-18).

The examiner withdraws claims 5, 6, dependent claim 7, and 42 as being drawn to nonelected Species V (Figs. 19-20).

The examiner withdraws claims 3, 9, and 10 as being drawn to nonelected Species VI (Fig. 21).

The examiner withdraws claim 27 as being drawn to at least one of nonelected Species III-VI (Figs. 10-21).

In summary, claims 3, 5-7, 9-10, 15-16, 25-30, 36, 39, and 42 are withdrawn from further consideration. Claims 1-2, 4, 8, 11-14, 17-24, 31-35, 37-38, 40-41, and 43-46 are examined.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 17 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No.

10/999230. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims specify: a shaft, a flexible portion, and a head coupled to the shaft through the flexible portion and pivotably coupled to the flexible portion, the head including a non-conductive surface and an electrically conductive surface, wherein the flexible portion is configured to bias the non-conductive surface and the electrically conductive surface towards a tissue surface.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 17 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of copending Application No. 10/999230. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims specify: a shaft, a flexible portion, and a head coupled to the shaft through the flexible portion and pivotably coupled to the flexible portion, the head including a non-conductive surface and an electrically conductive surface, wherein the flexible portion is configured to bias the non-conductive surface and the electrically conductive surface towards a tissue surface. Furthermore, it would be obvious, if not inherent, for the non-conductive surface of 10/766894 to be adjacent at least a portion of the electrically conductive portion, since the non-conductive portion limits penetration of the electrically conductive surface into the tissue surface.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 18 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2 and 12 of copending Application No. 10/999230. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims specify: a shaft, a flexible portion, and a head coupled to the shaft through the flexible portion, the head being pivotably coupled to the flexible portion, the head including a substantially planar tissue contact surface including a non-conductive portion and an electrically conductive portion. In addition, it would be obvious and require only routine skill in the art to make a flexible portion to be resiliently flexible since such materials are well-known and widely used in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim 43 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of copending Application No. 10/999230. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims specify: a shaft, a resiliently flexible portion, and a head coupled to the shaft through the resiliently flexible portion, the head being pivotably coupled to the resiliently flexible portion, the head including a

substantially planar tissue contact surface including a non-conductive portion and an electrically conductive portion.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-2, 4, 8, 11-14, 17-24, 31-35, 37-38, 40-41, and 43-46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 and 12 of copending Application No. 10/999230. Although the conflicting claims are not identical, they are not patentably distinct from each other because the more specific claims of 10/766894 encompass the broader claims in 10/999230. In addition, the "resiliently flexible portion" and "non-conductive surface" of 10/999230 are elements that are obvious and well-known to one of ordinary skill in the art. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the separate rigid wire

of claims 13 and 14 must be shown or the feature canceled from the claims. In addition, the electrically conductive surface projecting and recessed in the non-conductive surface must be shown or the features canceled from claims 20 and 21. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 8 ,11-12, 32-35, 37-38, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Lennox (U.S. Pat. No. 5,919,191).

Regarding claim 1, Lennox discloses an electrosurgical instrument comprising:

a shaft 20 (Figs. 1 and 4);

a flexible portion 46 (col. 5, ln. 61-63, col. 7, ln. 12-18, and Figs. 1 and 5-7); and

a head 14 coupled to the shaft 20 through the flexible portion 46 and pivotably coupled to the flexible portion (col. 11, ln. 13-16 and Fig. 8), the head including an electrically conductive surface (col. 5, ln. 50-60),

wherein the flexible portion 46 is configured to bias the electrically conductive surface towards a tissue surface (Figs. 5-7).

Regarding claim 4, Lennox discloses the instrument of claim 1, wherein the flexible portion comprises a spring (col. 8, ln. 1-12 and Fig. 9).

Regarding claim 8, Lennox discloses the instrument of claim 1, wherein the flexible portion is configured to flex in at least a direction and the head is configured to pivot about an axis substantially perpendicular to the direction (col. 11, ln. 13-16 and Figs. 8-9).

Regarding claim 11, Lennox discloses the instrument of claim 1, wherein the head 14 includes a slot about which the head is configured to pivot (col. 11, ln. 13-16 and Figs. 1 and 8).

Regarding claim 12, Lennox discloses the instrument of claims 1 and 11, wherein the slot is a transverse slot pivotably receiving the flexible portion (col. 11, ln. 13-16 and Figs. 1 and 8).

Regarding claim 32, Lennox discloses the instrument of claim 1, further comprising a sheath 28, 101 coupled to the shaft and moveable to at least partially cover the flexible portion and the head (col. 6, ln. 11-15 and Figs. 1a and 12).

Regarding claim 33, Lennox discloses a method of performing electrosurgery comprising:

positioning an electrically conductive surface of a head 14 of an instrument adjacent to a tissue surface, the head being pivotable relative to a shaft 20 of the instrument (col. 5, ln. 61-63, col. 7, ln. 12-18, and Figs. 1 and 5-7); and

moving the shaft relative to the tissue surface with the head pivoting such that the electrically conductive surface is oriented substantially parallel to the tissue surface (Figs. 5-10).

Regarding claim 34, Lennox discloses the method of claim 33, further comprising biasing the electrically conductive surface towards the tissue using a flexible portion 46 of the instrument (col. 5, ln. 61-63, col. 7, ln. 12-18, and Figs. 1 and 5-7).

Regarding claim 35, Lennox discloses an electrosurgical instrument comprising:

a shaft 20; and

a head 14 coupled to the shaft, the head including an electrically conductive surface, the head being pivotable relative to the shaft such that the electrically conductive surface is oriented substantially parallel to the tissue surface as the head

moves across the tissue surface (col. 5, ln. 61-63, col. 7, ln. 12-18, and Figs. 1 and 5-10).

Regarding claim 37, Lennox discloses an electrosurgical instrument comprising:

a shaft 20; and

a head 14 coupled to the shaft, the head including an electrically conductive surface,

wherein the head is configured to pivot relative to the shaft (col. 5, ln. 61-63, col. 7, ln. 12-18, and Figs. 1 and 5-10) and to slide across a tissue surface as the electrically conductive surface is moved across the tissue surface (col. 11, ln. 11-13).

Regarding claim 38, Lennox discloses a method of performing electrosurgery comprising:

positioning an electrically conductive surface of a head of an instrument adjacent to a tissue surface, the head being pivotably coupled to a shaft (col. 5, ln. 61-63, col. 7, ln. 12-18, and Figs. 1 and 5-10); and

sliding the head across the tissue surface, wherein the head pivots relative to the shaft to facilitate the sliding (Figs. 5-10).

Regarding claim 46, Lennox discloses an electrosurgical instrument comprising:

conducting means 14 for applying energy to a tissue surface (col. 5, ln. 50-60);

flexing means 46 coupled to the conducting means for biasing the conducting means towards the tissue surface (col. 5, ln. 61-63, col. 7, ln. 12-18, and Figs. 1 and 5-7); and

pivoting means for pivoting the conducting means relative to the flexing means (col. 11, ln. 13-16 and Fig. 8).

Claims 1, 17-24, 31, 40-41, and 43-45 rejected under 35 U.S.C. 102(b) as being anticipatd by Haissaguerre (U.S. Pat. No. 6,068,629).

Regarding claim 1, Haissaguerre discloses an electrosurgical instrument comprising:

a shaft 6 (Fig. 1);

a flexible portion 28 (Fig. 1); and

a head 30 coupled to the shaft 6 through the flexible portion 28 and pivotably coupled 32 to the flexible portion (col. 7, ln. 10-20 and Fig. 1), the head including an electrically conductive surface 38 (col. 7, ln. 20-22 and Fig. 4),

wherein the flexible portion 28 is configured to bias the electrically conductive surface towards a tissue surface (Fig. 20).

Regarding claim 17, Haissaguerre discloses the instrument of claim 1, wherein the head further comprises a non-conductive surface 108, 110 arranged relative to the electrically conductive surface to limit penetration of the electrically conductive surface into the tissue surface (col. 11, ln. 26-30 and Figs. 8-11).

Regarding claim 18, Haissaguerre discloses the instrument of claims 1 and 17, wherein the non-conductive surface is substantially planar (Figs. 8-11).

Regarding claim 19, Haissaguerre discloses the instrument of claims 1 and 17, wherein the non-conductive surface is substantially flush with the electrically conductive surface (Fig. 11).

Regarding claim 20, Haissaguerre discloses the instrument of claims 1 and 17, wherein the electrically conductive surface 122 projects from the non-conductive surface 108, 110 (Figs. 9-10).

Regarding claim 21, Haissaguerre discloses the instrument of claims 1 and 17, wherein the electrically conductive surface 255 is recessed in the non-conductive surface 250 (Figs. 18A-C).

Regarding claim 22, Haissaguerre discloses the instrument of claims 1 and 17, wherein the electrically conductive surface has a first surface area, the non-conductive surface has a second surface area, and the first surface area is smaller than the second surface area (Figs. 9, 14A, 17, and 18).

Regarding claim 23, Haissaguerre discloses the instrument of claim 1, wherein the head comprises an electrode and the electrode includes the electrically conductive surface (Fig. 17).

Regarding claim 24, Haissaguerre discloses the instrument of claims 1 and 23, wherein the electrode has a T-shape (Fig. 17).

Regarding claim 31, Haissaguerre discloses the instrument of claim 1, wherein the head has a substantially parallelpiped shape (Figs. 18A and 18C).

Regarding claim 40, Haissaguerre discloses an electrosurgical instrument comprising:

a shaft;

a resiliently flexible portion; and

a head coupled to the shaft through the resiliently flexible portion, the head being pivotably coupled to the resiliently flexible portion, the head including a substantially planar tissue contact surface including an electrically conductive portion.

Regarding claim 1, Haissaguerre discloses an electrosurgical instrument comprising:

a shaft 6 (Fig. 1);

a resiliently flexible portion 28 (col. 7, ln. 48-65, U.S. Pat. No. 5,487,757 – incorporated by reference, and Fig. 1); and

a head 30 coupled to the shaft 6 through the resiliently flexible portion 28, the head being pivotably coupled 32 to the resiliently flexible portion (col. 7, ln. 10-20 and Fig. 1), the head including a substantially planar tissue contact surface (Figs. 11 and 15) including an electrically conductive surface 38 (col. 7, ln. 20-22 and Fig. 4).

Regarding claim 41, Haissaguerre discloses the instrument of claim 40, wherein the shaft defines a longitudinal axis and the head is offset from the axis (Figs. 1 and 15).

Regarding claim 43, Haissaguerre discloses the instrument of claim 40, wherein the substantially planar contact surface includes a non-conductive portion 108, 110 (col. 11, ln. 26-30 and Figs. 8-11).

Regarding claim 44, Haissaguerre discloses the instrument of claim 40, wherein the non-conductive portion has a larger surface area than the electrically conductive portion (Figs. 9, 14A, 17, and 18).

Regarding claim 45, Haissaguerre discloses the instrument of claim 40, further comprising an electrical lead coupled to the electrically conductive portion (col. 9, ln. 39-42).

Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lennox ('881).

Regarding claims 13 and 14, Lennox discloses the instrument of claims 1 and 11. Since the coagulating electrode 14 of Lennox limits the penetration depth of the resecting electrode 12 (col. 7, ln. 42-55 and Figs. 2 and 7), it would be obvious, if not inherent, for the transverse slot to receive a transverse, rigid wire that is coupled to the flexible portion. This transverse, rigid wire prevents the coagulating electrode from bending further upward between the resecting fork 48, thereby limiting the penetration depth of the resecting electrode 12. If the transverse wire of Lennox were flexible, it would allow the coagulating electrode to bend further upward between the resecting fork 48, which would not limit the penetration depth as is disclosed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lennox ('191) in view of Rosar (U.S. Pat. No. 5,300,068).

Regarding claim 2, Lennox discloses the instrument of claim 1. The claim differs from Lennox in calling for the flexible portion to comprise a nitinol wire. Lennox discloses that coagulating electrode head 14 has wire leads to connect the electrode to power source 21 (col. 6, ln. 4-6 and Fig. 1). These wire leads must be inherently flexible since they pass through the flexible portion 46 (Figs. 2 and 5-7). Rosar teaches an electrosurgical instrument, wherein a flexible wire lead 302 comprises nitinol (col. 9, ln. 54-66). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the wire leads of Lennox (and therefore, the flexible portion) comprise nitinol in view of the teaching of Rosar as an obvious material that is well-known in the art for making flexible wire leads.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haissaguerre ('629) in view of Rosar (U.S. Pat. No. 5,300,068).

Regarding claim 2, Haissaguerre discloses the instrument of claim 1. The claim differs from Haissaguerre in calling for the flexible portion to comprise a nitinol wire. Haissaguerre discloses that the electrodes 38 have electrical wire leads that comprise flexible conductors (col. 9, ln. 39-47). Rosar teaches an electrosurgical instrument, wherein a flexible wire lead 302 comprises nitinol (col. 9, ln. 54-66). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the wire leads of Haissaguerre (and therefore, the flexible portion) comprise nitinol in view of the teaching of Rosar as an obvious material that is well-known in the art for making flexible wire leads.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tu (U.S. Pat. No. 6,238,390 B1) in view of Lennox ('191).

Regarding claim 38, Lennox discloses a method of performing electrosurgery comprising:

positioning an electrically conductive surface of a head 13 of an instrument adjacent to a tissue surface (col. 5, ln. 49-54 and Fig. 6), the head 13 being pivotably coupled (via 2) to a shaft 1 (col. 5, ln. 32-44); and

rolling the head across the tissue surface, wherein the head pivots via 2 relative to the shaft to facilitate the rolling (Fig. 6 – The head of Tu pivots to put the electrode in the right position for moving it across the tissue surface).

The claim differs from Tu in calling for the head to slide across the tissue surface. Lennox, however, teaches that rolling and sliding cylindrical electrodes are obvious and

interchangeable means for moving an electrode across a tissue surface (col. 11, ln. 11-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a sliding electrode in the device of Tu in view of the teaching of Lennox as an obvious alternate means for moving an electrode across a tissue surface that is known in the art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 2022065 A	USOCR	WAPPLER FREDERICK C
US 4713063 A	USPAT	Krumme; John F.
US 5197491 A	USPAT	Anderson; John et al.
US 5238005 A	USPAT	Imran; Mir
US 5314466 A	USPAT	Stern; Roger A. et al.
US 5395363 A	USPAT	Billings; R. Gail et al.
US 5441499 A	USPAT	Fritzsch; Gernod
US 5464404 A	USPAT	Abela; George S. et al.
US 5549606 A	USPAT	McBrayer; Michael S. et al.
US 5549605 A	USPAT	Hahnen; Kevin F.
US 5582609 A	USPAT	Swanson; David K. et al.
US 5599349 A	USPAT	D'Amelio; Frank D.
US 5634924 A	USPAT	Turkel; David et al.
US 5782828 A	USPAT	Chen; Peter Cheng et al.
US 5843019 A	USPAT	Eggers; Philip E. et al.
US 6210409 B1	USPAT	Ellman; Alan G. et al.
US 6296654 B1	USPAT	Ward; Kevin R
US 6494881 B1	USPAT	Bales; Thomas O. et al.
US 20040102771 A1	US-PGPUB	Bertolero, Art et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex B. Toy whose telephone number is (571) 272-1953. The examiner can normally be reached on Monday through Friday, 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AT AT
8/15/06

MICHAEL PEFFLEY
PRIMARY EXAMINER